Adam bin Hamil v Dr Chiam Tee Kiang

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-23NCvC-26–03 OF 2022
ROZ MAWAR J
15 NOVEMBER 2024

Tort — Negligence — Medical negligence — Aesthetic Medical Practice — Nose implant work and ear cartilage grafting — Whether aesthetic medical practitioner ('doctor') qualified to perform procedures — Whether doctor lacked awareness of limitations of own qualifications — Whether doctor failed to inform patient that he was not permitted to carry out procedures according to licence held — Whether doctor's failure to disclose limitations of qualifications undermined patient's ability to make informed choice about treatment — Whether doctor's defence that patient requested to procedures could stand — Whether doctor could perform procedures beyond qualification at request of patient — Whether doctor breached standard of care — Whether patient's pain and suffering caused due to doctor's breach — Whether damages claimed by patient should be awarded

The plaintiff became aware of Gorgeous Clinic via social media and was interested to enhance his nasal appearance. At the plaintiff's initial consultation, the defendant advised the plaintiff to remove the nose implant in the plaintiff's nose. The plaintiff had at that point in time, five separate rhinoplasty procedures in Thailand. The defendant advised him to do so after a physical inspection of the plaintiff's nose which he concluded that there was an impending nose-tip rupture which would increase the possibility of infection. The plaintiff, however, refused and insisted on an implant trimming procedure instead by using an ear cartilage graft. After the procedure, the plaintiff experienced swelling. Despite initial reassurances from Gorgeous Clinic that they were normal post-surgical symptoms; the plaintiff's condition did not improve. Nevertheless, the plaintiff presented himself again at Gorgeous Clinic with the intention to have another trimming of the nose implant. The defendant explained that if the nose implant was not removed, the infection would persist. The plaintiff instead persisted on a second nose implant trimming and hence, the defendant proceeded to perform the second nose implant trimming surgical procedure on the plaintiff. Subsequently, the plaintiff complained to the defendant about the state of his nose. He then sought medical assistance with Dr Nasir who found the plaintiff's nose infected and recommended further surgical intervention. Dr Nasir advised that the plaintiff remove the nose implant. After worsening symptoms, the plaintiff eventually underwent corrective surgery with Dr Nasir after experiencing another episode of infection of his nose. The plaintiff then commenced a

medical negligence claim against the defendant. The issues that arose for determination were: (a) whether the defendant, as an aesthetic medical practitioner qualified only under Chapter 1 of the Guidelines on Aesthetic Medical Practice ('LCP'), was qualified and licensed to perform these procedures on the plaintiff; if yes; (b) whether the defendant breached his standard of care towards the plaintiff; and (c) whether the plaintiff's pain and suffering was caused due to the defendant's breach.

Held, allowing the plaintiff's claim in part:

(1) The defendant was only qualified under Chapter 1 of the LCP, which permitted basic aesthetic procedures. The defendant was unable to state which procedures he was qualified to perform under his Chapter 1 of the LCP certification without referring to his certificate. This demonstrated a concerning lack of awareness of the limitations of his own qualifications (see para 40).

(2) The surgical procedures carried out by the defendant on the plaintiff to trim his nose implant with ear cartilage grafting on the plaintiff were not within the scope of Chapter 1 of the LCP of which the defendant was licensed for. In fact, the injections that the defendant had administered on the plaintiff were outside of his scope that he was licenced for. The defendant had failed to inform the plaintiff that he was not permitted to carry out such medical procedure according to the Chapter 1 LCP licence he held. The defendant's failure to disclose the limitations of his qualifications to the plaintiff undermined the latter's ability to make an informed choice about his treatment (see paras 41–42 & 54).

(3) The defendant by presenting himself as qualified to perform nose implant procedures, owed a duty to exercise the standard of care of a cosmetic surgical specialist. By performing the procedures on the plaintiff which were beyond his qualification and licensing, the defendant had fundamentally breached this duty of care. This breach was not merely technical but went to the root of patient safety and medical ethics. Further, the defendant's defence that the plaintiff had requested or consented to the procedures could not stand because a medical practitioner could not perform procedures beyond their qualification merely because a patient requested it. A valid consent required full disclosure of the practitioner's qualifications and limitations, but the defendant failed to disclose that he was not qualified to perform these procedures. Even though the defendant's advice was the same as that accorded by Dr Nasir, the fact that he had taken opposite action of his advice which was by carrying out the surgical procedures that he was not licenced to did not negate his breach of duty (see paras 44–46).

(4) The surgical procedures undertaken by the defendant on the plaintiff had not resolve his nose implant issues but instead aggravated it because the

nose implant was not removed but trimmed instead. As such, the condition of the plaintiff was not alleviated. The infection of the plaintiff's nose had persisted from the surgical procedures performed by the defendant to a long period after that. The plaintiff had only recovered from that condition upon the removal of the nose implant, which was carried out by Dr Nasir. Therefore, the causation of the defendant's breach of duty/standard of care to the plaintiff's pain and suffering was established (see paras 47–48).

(5) Although the plaintiff had refused to heed the defendant's advice and it was his choice to undergo the procedure to trim the nose implant, the defendant had still breached the medical code of ethics by having proceeded to carry out medical aesthetic procedures of which he was not licensed for. Hence, the defendant acted negligently by performing medical procedures beyond his qualification and license and this constituted a fundamental breach of the standard of care expected of medical practitioners. In the circumstances, the defendant was liable for the injuries and complications suffered by the plaintiff as a result of these unauthorised procedures (see paras 49–50).

(6) For pain and suffering, the plaintiff was awarded RM150,000 taking into account the effects from the procedure performed by the defendant that resulted in the plaintiff having had experience puss discharge because the trimming of the plaintiff's nose implant which had caused the infection to continue. The fact that any reconstructive surgery would not fully revert the plaintiff's nose shape back to its original condition, the pain and discomfort during recovery periods and as well as some psychological impact on his mental health due to the failed procedures was also taken into account. For special damages, according to the bills, invoices and documents adduced by the plaintiff, the plaintiff was awarded RM68,239.55 (see paras 58 & 60).

(7) For future medical expenses, Dr Nasir adduced evidence that it would costs around of RM80,000 to repair and reconstruct the plaintiff's nose and to erase the scars. The court noted that the plaintiff had undergone two corrective rhinoplasty surgeries in Vietnam and Thailand. That amounted to RM56,469.55. The award RM80,000 was accordingly awarded to the plaintiff for future medical expenses. As the amount of RM56,469.55 had already been awarded under special damages, a sum of RM23,530.45 was awarded (see para 64).

(8) An award of exemplary damages was appropriate in this case. Exemplary damages were awarded for deterrence purposes, to make an example of, such as in this case where beauty clinics which have mushroomed nationwide offering beauty aesthetics surgeries must be careful not to proceed to administer and perform procedures beyond their limit

allowed by their respective licence. In this case against the defendant, the sum of RM100,000 was awarded to the plaintiff as exemplary damages (see para 65).

[Bahasa Malaysia summary

Plaintif melihat khidmat Klinik Gorgeous melalui media sosial dan berminat untuk membuat pembedahan kosmetik untuk hidungnya. Pada konsultasi awal plaintif, defendan menasihati plaintif untuk mengeluarkan implan hidung di dalam hidung plaintif. Plaintif pada ketika itu, telah menjalankan lima prosedur rhinoplasty berasingan di Thailand. Defendan menasihatkannya untuk berbuat demikian selepas pemeriksaan fizikal hidung plaintif dan membuat kesimpulan bahawa terdapat hujung hidungnya telah pecah dan berkemungkinan menyebabkan jangkitan. Plaintif bagaimanapun, menolak dan meminta prosedur pemotongan implan dibuat berbanding menggunakan cantuman rawan telinga ('ear cartilage graft'). Selepas prosedur tersebut, plaintif mengalami bengkak. Walaupun terdapat jaminan awal dari Klinik Gorgeous bahawa gejala bengkak selepas pembedahan tersebut adalah normal, keadaan plaintif tidak bertambah baik. Namun begitu, plaintif hadir semula di Klinik Gorgeous untuk melakukan pemotongan implan hidung yang lain. Defendan menjelaskan bahawa sekiranya implan hidung tidak dikeluarkan, jangkitan akan berterusan. Plaintif sebaliknya mahu meneruskan pemotongan implan hidung kedua dan defendan meneruskan untuk melakukan prosedur pembedahan pemotongan implan hidung kedua ke atas plaintif. Selepas itu, plaintif mengadu kepada defendan tentang keadaan hidungnya. Beliau kemudian mendapatkan bantuan perubatan dengan Dr Nasir yang mendapati hidung plaintif mengalami jangkitan dan mengesyorkan pembedahan pembetulan. Dr Nasir menasihatkan agar plaintif mengeluarkan implan hidung tersebut. Selepas gejala yang semakin teruk, plaintif akhirnya menjalani pembedahan pembetulan dengan Dr Nasir selepas mengalami jangkitan hidungnya yang berterusan. Plaintif kemudian memfailkan tuntutan kecuaian perubatan terhadap defendan. Isu-isu yang timbul untuk penentuan ialah: (a) sama ada defendan, sebagai pengamal perubatan estetik yang hanya layak menurut Bab 1 Garis Panduan Amalan Perubatan Estetik ('LCP'), layak dan dilesenkan untuk melaksanakan prosedur ini ke atas plaintif; dan sekiranya ya; (b) sama ada defendan melanggar standard kewajipan berjaga-jaga terhadap plaintif; dan (c) sama ada kesakitan dan penderitaan plaintif disebabkan oleh pelanggaran defendan.

Diputuskan, membenarkan tuntutan plaintif secara sebahagian:

(1) Defendan hanya layak di bawah Bab 1 sijil LCP yang hanya membenarkan prosedur estetik secara asas. Defendan tidak dapat menyatakan di dalam Bab 1 LCP bahawa prosedur tersebut layak dibuat tanpa merujuk kepada sijilnya. Hal ini menunjukkan terdapat

kekurangan kesedaran yang membimbangkan mengenai had kelayakannya (lihat perenggan 40).

(2) Prosedur pembedahan yang dijalankan oleh defendan ke atas plaintif untuk memotong implan hidungnya dengan cantuman rawan telinga ('ear cartilage graft') pada plaintif tiada di dalam skop Bab 1 LCP yang mana defendan dilesenkan. Malah, suntikan yang telah diberikan kepada plaintif adalah di luar skop yang dilesenkannya. Defendan telah gagal memaklumkan kepada plaintif bahawa dia tidak dibenarkan menjalankan prosedur perubatan sedemikian menurut lesen LCP Bab 1 yang diperolehnya. Kegagalan defendan untuk mendedahkan had kelayakannya kepada plaintif menjejaskan keupayaan plaintif untuk membuat pilihan termaklum mengenai rawatannya (lihat paras 41–42 & 54).

(3) Defendan telah menunjukkan dirinya sebagai layak untuk melakukan prosedur implan hidung, mempunyai kewajipan untuk melaksanakan standard kewajipan berjaga-jaga sebagai pakar pembedahan kosmetik. Dengan melaksanakan prosedur ke atas plaintif yang melampaui kelayakan dan pelesenannya, defendan pada asasnya telah melanggar kewajipan berjaga-jaga ini. Pelanggaran ini bukanlah teknikal semata-mata namun pergi ke perkara asas iaitu keselamatan pesakit dan etika perubatan. Selanjutnya, pembelaan defendan bahawa plaintif telah meminta atau bersetuju dengan prosedur tersebut tidak dapat dipertahankan kerana pengamal perubatan tidak boleh melakukan prosedur di luar kelayakan mereka hanya kerana pesakit memintanya. Persetujuan ('consent') yang sah memerlukan pendedahan penuh mengenai kelayakan dan had pengamal perubatan, namun defendan gagal mendedahkan bahawa dia tidak layak untuk melaksanakan prosedur ini. Walaupun nasihat defendan adalah sama dengan yang diberikan oleh Dr Nasir, fakta bahawa dia telah mengambil tindakan yang bertentangan dengan nasihatnya iaitu dengan menjalankan prosedur pembedahan yang tidak dilesenkan tidak menafikan pelanggaran kewajipannya (lihat perenggan 44–46).

(4) Prosedur pembedahan yang dilakukan oleh defendan ke atas plaintif tidak menyelesaikan masalah implan hidungnya tetapi memburukkan lagi keadaan kerana implan hidung tidak dikeluarkan dan sebaliknya dipotong. Oleh itu, keadaan plaintif tidak dipulihkan. Jangkitan hidung plaintif telah berterusan disebabkan prosedur pembedahan yang dilakukan oleh defendan untuk tempoh yang lama selepas itu. Plaintif hanya pulih daripada keadaan itu selepas pembuangan implan hidung yang dijalankan oleh Dr Nasir. Oleh itu, kausa sebab pelanggaran kewajipan/standard berjaga-jaga defendan terhadap kesakitan dan penderitaan plaintif telah dibuktikan (lihat perenggan 47–48).

(5) Walaupun plaintif enggan mendengar nasihat defendan dan memilih

untuk menjalani prosedur untuk memotong implan hidungnya, defendan masih melanggar kod etika perubatan dengan meneruskan prosedur estetik perubatan yang tidak dilesenkan. Oleh itu, defendan bertindak cuai dengan melakukan prosedur perubatan di luar kelayakannya dan lesennya dan hal ini merupakan pelanggaran asas standard kewajipan berjaga-jaga yang diharapkan daripada pengamal perubatan. Dalam keadaan tersebut, defendan bertanggungjawab atas kecederaan dan komplikasi yang dialami oleh plaintif akibat dari prosedur yang tidak dibenarkan ini (lihat perenggan 49–50).

(6) Bagi kesakitan dan penderitaan, plaintif telah diberikan jumlah sebanyak RM150,000 dengan mengambil kira kesan daripada prosedur yang dilakukan oleh defendan yang menyebabkan plaintif mengalami nanah yang terkeluar kerana pemotongan implan hidung plaintif yang menyebabkan jangkitan berterusan. Fakta bahawa sebarang pembedahan rekonstruktif tidak akan mengembalikan sepenuhnya bentuk hidung plaintif kembali kepada keadaan asalnya, kesakitan dan ketidakselesaan semasa tempoh pemulihan dan serta beberapa kesan psikologi terhadap kesihatan mentalnya akibat prosedur yang gagal juga harus diambil kira. Bagi ganti rugi khas, menurut bil, invois dan dokumen yang dikemukakan oleh plaintif, plaintif diberikan jumlah sebanyak RM68,239.55 (lihat perenggan 58 & 60).

(7) Untuk perbelanjaan perubatan pada masa hadapan, Dr Nasir mengemukakan bukti bahawa ianya akan memerlukan perbelanjaan sekitar RM80,000 untuk membaiki dan membina semula hidung plaintif dan memadamkan parut. Mahkamah menyatakan bahawa plaintif telah menjalani dua pembedahan rhinoplasty pembetulan di Vietnam dan Thailand. Jumlah itu berjumlah RM56,469.55. Jumlah sebanyak RM80,000 itu diberikan kepada plaintif untuk perbelanjaan perubatan pada masa hadapan. Oleh kerana jumlah sebanyak RM56,469.55 telah diberikan di bawah ganti rugi khas, jumlah sebanyak RM23,530.45 telah diberikan (lihat perenggan 64).

(8) Ganti rugi teladan adalah sesuai dalam kes ini. Ganti rugi teladan telah diberikan untuk tujuan pencegahan, sebagai contoh, seperti dalam kes ini yang mana klinik kecantikan yang telah berkembang di seluruh negara yang menawarkan pembedahan estetik kecantikan haruslah berhati-hati untuk tidak melaksanakan prosedur melebihi had kelayakan yang dibenarkan oleh lesen masing-masing. Dalam kes terhadap defendan ini, jumlah sebanyak RM100,000 telah diberikan kepada plaintif sebagai ganti rugi teladan (lihat perenggan 65).]

Cases referred to

Abiramee a/p Ramalingam (berniaga atas nama Posh Medispa) v Nur Isabella bt Abdullah & Ors [2023] MLJU 3145; [2023] CLJU 2799; [2023] MLRHU 2276, HC (refd)

Foo Fio Na v Dr Soo Fook Mun & Anor [2007] 1 MLJ 593; [2006] 2 MLRA 410; [2007] 1 CLJ 229; [2002] 2 AMR 1524, FC (refd)

Hasniyati bt Hassan & Anor v Kerajaan Malaysia [2022] 10 MLJ 469; [2022] 5 MLRH 675; [2022] 7 CLJ 565; [2022] 3 AMR 726, HC (refd)

Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors [2016] 2 MLJ 1; [2016] 1 MLRA 647; [2016] 2 CLJ 885; [2016] 2 AMR 217, FC (refd)

Loo Chooi Gaik v Dr Loh Lay Soon [2017] CLJU 552; [2018] MLRAU 520, HC (refd)

Norfazlin bt Zamani v Kerajaan Malaysia & Ors [2022] MLJU 3696; [2022] MLRHU 3042, HC (refd)

Nur Arissa Naura Noor Affrizal & Anor v Dr Abirami Kunaseelan & Ors [2023] 5 CLJ 793; [2023] MLRHU 637, HC (refd)

Pantai Medical Centre Sdn Bhd v Fareed Reezal bin Arund (suing through his wife and litigation representative Wan Zafura bt Wan Kassim) and another appeal [2022] 4 MLJ 529; [2022] 2 CLJ 173; [2022] 2 MLRA 592; [2022] 1 AMR 837, CA (refd)

Rogers v Whitaker (1992) 175 CLR 479, HC (refd)

Shanmugam a/l Gopal v Zinal Abidin bin Nazim & Anor [2003] 3 MLJ 76; [2003] 3 MLRH 410; [2003] 8 CLJ 729, HC (refd)

Sheela Christina Nair v Regency Specialist Hospital Sdn Bhd & Ors [2016] MLJU 1899; [2016] MLRHU 758, HC (refd)

Sri Inai (Pulau Pinang) Sdn Bhd v Yong Yit Swee & Ors [2003] 1 MLJ 273; [2002] 4 CLJ 776; [1998] 3 AMR 2847, CA (refd)

Yang Salbiah & Anor v Jamil bin Harun [1981] 1 MLJ 292; [1980] 1 MLRA 716, FC (refd)

Suresh Murti Hamsagayathri a/p Loghanathan (with Dyna Sri Samadass) (Hafarizam Wan & Aisha Mubarak) for the plaintiff.

Christopher Foo (with Harish Nair and Maxine Lim Jia Xin) (Juen, Jeat, Nic & Nair) for the defendant.

Roz Mawar J:

[1] This is a medical negligence claim arising from two aesthetic procedures performed by the defendant on the plaintiff. The procedures involved nose implant work and ear cartilage grafting. At the heart of this case lies a fundamental question: whether the defendant, as an aesthetic medical practitioner qualified only under Chapter 1 of the Guidelines on Aesthetic Medical Practice ('LCP'), was qualified and licensed to perform these procedures on the plaintiff. If he was, did he breach his standard of care towards

the plaintiff? Was the plaintiff's pain and suffering due to the plaintiff's breach? A

[2] The plaintiff had commenced his suit for medical negligence against the defendant and one Dr Jeffrey Lim Chung Yeow, both who were practising together at Gorgeous Clinic, G-6 Block A Vista Magna, Metro Prima Kepong, 52100 Kuala Lumpur. That was where the two aesthetic procedures undertaken by the defendant on the plaintiff took place. His suit was filed on 28 March 2022. On 27 September 2023, the plaintiff withdrew his claim against Dr Jeffrey Lim Chung Yeow. The trial was against the defendant alone. B

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[3] Prior to the trial, on 20 April 2023 this court had ordered the plaintiff to bring down his live videos posted on his social media account recording his visit to Gorgeous Clinic, harassing and berating the defendant uttering *sub judis* comments. Then on 26 July 2023 this court had ordered that the plaintiff to adhere and comply withthe order of 20 April 2023 with immediate effect and he was fined RM10,000 for failing to abide by the said court order. D

PLEADINGS OF THE PARTIES

[4] The plaintiff's case rests primarily on the contention that the defendant was negligent contending that the defendant had failed, refused and/or was negligent to provide proper advice in accordance with medical procedural standards. The plaintiff alleged the defendant failed, refused and/or was negligent to comply with the standards of the professional code of ethics of the practice of medicine. There are ten other particulars of negligence pleaded that included the failure to provide advice on the procedure to be performed on the plaintiff and its side effects, to ensure that the 'rhinoplasty surgery' was done properly without any negligence and complications, and maintaining sterile environment for the surgical procedures. E F

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[5] In his defence, the defendant pleaded that the plaintiff had undergone rhinoplasty procedures on five separate occasions in Thailand. He had suffered infections at the nose after each rhinoplasty which had resolved after intravenous antibiotic treatment and the plaintiff had also received a semi-permanent filler injection of the nose. The defendant during trial, alluded to deny that the procedure he had carried out against the plaintiff was rhinoplasty surgery; the defendant suggested through the questions put to the witnesses in this court that it was more like a corrective procedure. H

[6] The defendant's pleaded defence was that the plaintiff was not agreeable to the defendant's advice to remove the implant but instead had requested that the defendant trimmed the implant to a smaller size. The defendant claimed that he had advised the plaintiff on the effects of not removing the implant but the plaintiff was adamant. The defendant denied having represented to the I

plaintiff that he was a cosmetic surgeon who had carried out successful rhinoplasty procedures in the past.

[7] According to the defendant's pleaded defence, despite being informed and advised, the plaintiff had decided to proceed with nose implant trimming on 21 May 2021. The nose implant trimming was carried out by the defendant. A week later, on 28 May 2021 at the follow-up consultation, the defendant contended that he had attended to cleaning up the plaintiff's nose when it became swollen post-surgery and cleaned up the sutures. The defendant pleaded that at the subsequent follow-up consultations on 4 June 2021, 22 June 2021 and 30 June 2021, he had attended to the plaintiff accordingly.

THE EVIDENCE

[8] The plaintiff alleged that he suffered complications following a rhinoplasty procedure performed by the defendant at Gorgeous Clinic in Kuala Lumpur on 21 May 2021. He had testified at trial. He had called two doctors as his witnesses. PW2 had given evidence that the plaintiff was diagnosed with major depressive disorder in April 2022. However, in cross-examination PW2 admitted that the diagnosis was not concluded by him. He also could not confirm what precipitated the plaintiff's depression.

[9] PW3 is the other doctor the plaintiff had called as his witness who is Dr Nasir. He had attended to the plaintiff on 6 September 2021 based on complaints of puss discharge from the procedure performed by the defendant on his nose. Dr Nasir advised immediate removal of the implant which was the same advice the defendant had given to the plaintiff, and again, the plaintiff had refused to immediately abide to the advice.

[10] The plaintiff had another bout of infection on 19 December 2021. Dr Nasir performed a surgical procedure on the plaintiff on 23 December 2021. It was a surgery to remove the nose implant and wound toilet. This was to treat infection on the plaintiff's nose.

[11] The plaintiff had lodged a complaint to the Malaysian Medical Centre ('MMC') against the defendant. There was a hearing but this court is not appraised of the outcome. The plaintiff, the defendant and PW3 were amongst those who had testified at the MMC hearing.

[12] Evidence revealed that the plaintiff, then a 34-year-old hairstylist, became aware of Gorgeous Clinic via social media and was interested to enhance his nasal appearance. At his initial consultation on 20 May 2021, the defendant advised the plaintiff to remove the nose implant in the plaintiff's

nose. The plaintiff has had at that point in time, five separate rhinoplasty procedures in Thailand. The defendant advised him to do so after a physical inspection of the plaintiff's nose which he concluded that there was an impending nose-tip rupture which would increase the possibility of infection.

[13] The plaintiff had refused and insisted on an implant trimming procedure instead by using an ear cartilage graft. The procedure was conducted on 21 May 2021 by the defendant. The plaintiff was operated on for four hours by the defendant. The sutures were removed by the defendant a week later on 28 May 2021.

[14] Thereafter, the plaintiff experienced swelling so he had communicated the same to Gorgeous Clinic on 31 May 2024. The communication was through the WhatsApp application. The plaintiff was given assurance through Gorgeous Clinic telephone number that it was normal to undergo some swelling.

[15] Despite initial reassurances from Gorgeous Clinic that they were normal post-surgical symptoms, the plaintiff's condition did not improve. On 4 June 2021, the plaintiff saw the defendant who had assured him that the swelling was normal and that the nose was clean and there was no sign of infection.

[16] On 22 June 2021, at the follow-up consultation, the defendant administered an Intralesional Shincort Injection over the semi-permanent filler of the plaintiff's to reduce the size of the granulomatous soft tissue of the nose.

[17] On 30 June 2021, the defendant attended to the plaintiff again as there was minimal puss discharge from site of the plaintiff's inner nose. He was prescribed and administered intravenous antibiotics.

[18] The defendant had at the very beginning advised the plaintiff to remove the nose implant but the plaintiff had refused to adhere to the advice. The defendant had performed the surgical procedures on the plaintiff to trim the nose implant as desired by the plaintiff when the plaintiff was well informed of the high possible risk of infection. Again, at the follow-up consultation on 30 June 2021 that the plaintiff was again advised by the defendant that the plaintiff ought to remove his nose implant. This was reflected in the defendant's medical notes. The plaintiff was informed that if the nose implant was not removed, the risk of infection may worsen and there would be a scar formation over the tip of his nose.

[19] The plaintiff had received daily intravenous antibiotics from the defendant from 1 July 2021 to 7 July 2021. On each occasion there was no

observation and notation of any pus discharge.

[20] On 13 July 2021 The plaintiff presented himself at Gorgeous Clinic with a swelling at the nose tip. There was no pain or pus. His intention was to have another trimming of the nose implant. The defendant explained that if the nose implant was not removed, the infection would persist. The plaintiff instead persisted on a second nose implant trimming.

[21] Pursuant thereto, on 21 July 2021, the defendant proceeded to perform the second nose implant trimming surgical procedure on the plaintiff.

[22] On 28 July 2021 the plaintiff forwarded pictures of his nose to Gorgeous Clinic's telephone number on the WhatsApp application complaining about the state of his nose. He sent more pictures on 29 July 2021 including older pictures for comparison. Gorgeous Clinic responded that they will treat it after the post-surgical swell goes down. The plaintiff informed Gorgeous Clinic that he will return in a month but he did not. Instead, he had sought medical assistance at Beverly-Wilshire Medical Centre with Dr Nasir.

[23] The plaintiff sought corrective treatment from Dr Nasir, who found the plaintiff's nose infected and recommended further surgical intervention. Dr Nasir advised that the plaintiff remove the nose implant.

[24] The plaintiff was again reluctant and took time due to consider the advice which was the same as that of the defendant. The defendant claimed that it was due to financial constraints. After worsening symptoms, he eventually underwent corrective surgery with Dr Nasir on 23 December 2021 after experiencing another episode of infection of his nose.

[25] On 29 December 2021 at the follow-up consultation with Dr Nasir, the plaintiff was informed that his nose appearance may not revert to the original shape before the infection.

[26] Dr Nasir testified that the treatment for the plaintiff is a surgical reconstruction of the nose using cartilage graft with possible several refinement surgeries as necessary. The surgical reconstruction of the nose was estimated to cost RM50,000. The laser treatment for the scars was approximated to be RM30,000 over the course of two years. This was the cost estimated at Beverly-Wilshire Medical Centre.

[27] The plaintiff had proceeded to Vietnam and Thailand to undergo corrective rhinoplasty surgeries.

ISSUES TO BE DECIDED

[28] The main issues that require determination are:

(a) standard of care: what is the standard of care applicable to the defendant as a Chapter 1 LCP aesthetic practitioner?

(b) breach of duty of care: did the defendant breach the duty of care that he owed the plaintiff?

(c) causation: were the pain and trauma suffered by the plaintiff caused by the defendant's breach of duty? and

(d) damages: if liability is established, the appropriate quantum of damages to be awarded

EXPERT EVIDENCE

[29] The defendant had argued that Dr Nasir is not an expert witness as he had performed the corrective surgery on the plaintiff and thus was a witness of fact.

[30] This court is of the considered opinion that Dr Nasir's testimony is admissible and will accord the appropriate weight to his evidence with regards to:

(a) required qualifications for aesthetic procedures;

(b) definition of rhinoplasty surgery;

(c) who is qualified to perform aesthetic surgeries; and

(d) Chapter 1 LCP practitioners are not supposed to perform aesthetic surgeries.

[31] Dr Nasir's qualifications and experience lend him due weight given that he started his medical practice as a plastic surgeon in 1999. To the extent of the definition of rhinoplasty surgery and the required licence to perform aesthetic procures, this court accepts his evidence which was tested through the cross-examination by the defendant. This court is mindful that he was testifying for the plaintiff (see *Hasniyati bt Hassan & Anor v Kerajaan Malaysia* [2022] 10 MLJ 469; [2022] 5 MLRH 675; [2022] 7 CLJ 565; [2022] 3 AMR 726).

THIS COURT'S ASSESSMENT

[32] When assessing the standard of care owed by the defendant to the plaintiff, the defendant's qualification and licence take precedence. The first

question that must be determined is whether the defendant had the necessary qualification and licence to carry out the procedure performed on the plaintiff. This court heard at trial, in the field of aesthetic medical practice, there are levels to the scopes of practice a doctor is allowed to perform/administer on patients.

[33] The defendant adduced evidence that he possesses license under Chapter 1 of the LCP. He was qualified and authorised to carry out the following scope of practice:

(1) botulinum toxin injection;

(2) filler injection — excluding silicone and fat;

(3) lasers for treating skin pigmentation;

(4) lasers for skin rejuvenation (including fractional ablative);

(5) lasers for hair removal (eg long pulsed Nd: YAG, Diode); and

(6) skin tightening procedures — radiofrequency, ultrasound, infrared up to upper dermis.

[34] Dr Nasir whom the plaintiff called as his expert witness had actually treated the plaintiff. Although this court will consider his evidence, this court is mindful that he is not entirely an independent witness as he was involved in assessing and treating the plaintiff. Dr Nasir testified that anything that requires a breach of the skin level becomes surgery that is categorised as invasive procedure which can only be done under licence of Chapter 2 or Chapter 3 of the LCP. This court accepts that evidence.

[35] Neither party elaborated what Chapter 2 or Chapter 3 of the LCP entail as the plaintiff throughout the trial was more focused on proving to this Court that the defendant was medically negligent as he purportedly had breached his duty in trimming the plaintiff's existing nose implant. This was premised on the fact that the defendant held a Chapter 1 of the LCP.

[36] This court referred to the LCP that provided the list of procedures allowed to be performed by doctors who were granted licences under Chapter 2 and Chapter 3 of the LCP. Those scope of work under the two chapters must be performed by a medical or surgical specialist for aesthetic medical practice. The following are categorised as invasive procedures that include though not limited to:

(a) lasers for treating vascular lesions;

(b) chemical peels (deep);

(c) radiofrequency (external application); and

(d) ultrasound device (external application).

[37] The evidence shows that the plaintiff has had five rhinoplasty procedures prior to the first consultation with the defendant. His desire was to only trim the previous rhinoplasty done by another doctor in Thailand when he came to consult with the defendant. After inspection of the plaintiff's nose, the defendant had advised him against it. The plaintiff's nose was already infected with puss. The defendant advised him to remove the implant totally. The defendant's basis was that there was an impending skin rupture on the plaintiff's nose tip due to the extreme thinness of the plaintiff's skin.

[38] The defendant had explained to the plaintiff the implant trimming procedure which required using an ear cartilage graft to protect nose tip skin. The plaintiff agreed and the surgery was carried out on 21 May 2021.

[39] Evidence revealed that the defendant had administered anaesthetic procedures and carried out the surgery on the plaintiff. Based on the evidence before this court, the defendant was only qualified under Chapter 1 of the LCP, which permits basic aesthetic procedures such as:

(a) filler injections;

(b) laser treatments for skin and hair removal; and

(c) skin tightening procedures.

[40] Significantly, during cross-examination, the defendant was unable to state which procedures he was qualified to perform under his Chapter 1 of the LCP certification without referring to his certificate. This demonstrated a concerning lack of awareness of the limitations of his own qualifications.

[41] This court makes a finding of fact based on the evidence that the surgical procedures carried out by the defendant on the plaintiff to trim his nose implant with ear cartilage grafting on the plaintiff were not within the scope of Chapter 1 of the LCP of which the defendant was licensed for.

[42] In fact, the injections that he had administered on the plaintiff were outside of his scope that he was licenced for.

[43] On a balance of probabilities, there were representations on Gorgeous Clinic's social media that it carried out such intrusive and invasive aesthetic surgical procedures. The defendant being a doctor in Gorgeous Clinic did not refute such representation. So, this court finds that he had held himself out as having possesed expertise in nose implant procedures. The defendant had

A further failed to disclose the limitations of the procedures that he was licensed for.

STANDARD OF CARE

B **[44]** Following the Federal Court's decision in *Foo Fio Na v Dr Soo Fook Mun & Anor* [2007] 1 MLJ 593; [2006] 2 MLRA 410; [2007] 1 CLJ 229; [2002] 2 AMR 1524, which adopted the legal principle in *Rogers v Whitaker* (1992) 175 CLR 479, this court finds that:

C (a) the defendant, by presenting himself as qualified to perform nose implant procedures, owed a duty to exercise the standard of care of a cosmetic surgical specialist;

(b) by performing the procedures on the plaintiff which were beyond his qualification and licensing, the defendant has fundamentally breached
D this duty of care; and

(c) this breach is not merely technical — it goes to the root of patient safety and medical ethics.

E **[45]** The defendant's defence that the plaintiff had requested or consented to the procedures cannot stand because:

(a) a medical practitioner cannot perform procedures beyond their qualification merely because a patient requests it;

F (b) valid consent requires full disclosure of the practitioner's qualifications and limitations; and

(c) the defendant failed to disclose that he was not qualified to perform these procedures.

G

[46] Even though this court observes that the defendant's advice was the same as that accorded by Dr Nasir, the fact that he had taken opposite action of his advice which was by carrying out the surgical procedures that he was not licenced to does not negate his breach of duty.

H

[47] Evidence shows that the surgical procedures undertaken by the defendant on the plaintiff had not resolve his nose implant issues but instead aggravated it because the nose implant was not removed but trimmed instead. I As such, the condition of the plaintiff was not alleviated. The infection of the plaintiff's nose had persisted from the surgical procedures performed by the defendant to a long period after that. Based on the evidence, the plaintiff had only recovered from that condition upon the removal of the nose implant, which was carried out by Dr Nasir.

[48] On a balance of probabilities, this court is satisfied that the causation of the defendant's breach of duty/standard of care to the plaintiff's pain and suffering was established.

[49] Based on the evidence, this court finds on a balance of probabilities that the plaintiff had refused to heed the defendant's advice. It was his choice to undergo the procedure to trim the nose implant instead. However, the defendant had breached the medical code of ethics by having proceeded to carry out medical aesthetic procedures of which he was not licensed for. On a balance of probabilities this court further finds that the infection was not abated and was further caused by the procedure of trimming the nose implant. This was shown by the swelling and the puss discharge from the site of the nose where the said procedure was carried out by the defendant (see *Loo Chooi Gaik v Dr Loh Lay Soon* [2017] CLJU 552; [2018] MLRAU 520; *Abiramee a/p Ramalingam (berniaga atas nama Posh Medispa) v Nur Isabella bt Abdullah & Ors* [2023] MLJU 3145; [2023] CLJU 2799; [2023] MLRHU 2276; *Sri Inai (Pulau Pinang) Sdn Bhd v Yong Yit Swee & Ors* [2003] 1 MLJ 273; [2002] 4 CLJ 776; [1998] 3 AMR 2847).

LIABILITY

[50] Based on these findings, this court holds that:

(a) the defendant acted negligently by performing medical procedures beyond his qualification and license;

(b) this constituted a fundamental breach of the standard of care expected of medical practitioners; and

(c) the defendant is liable for the injuries and complications suffered by the plaintiff as a result of these unauthorised procedures.

[51] This finding of liability is based on the simple but crucial principle that medical practitioners must not perform procedures beyond their qualifications and licensing, regardless of their confidence in their ability to do so. This is fundamental to patient safety and the integrity of medical practice.

[52] The plaintiff had submitted a breach of duty of care by the defendant on three limbs:

(a) the defendant was not qualified;

(b) the defendant failed to maintain a sterile environment; and

(c) failure to inform the plaintiff of the risk of the procedure.

[53] In addressing the issue whether the defendant had failed to maintain a

sterile environment, this court finds that the plaintiff had failed to prove on a balance of probabilities that it was so. This court accepts the defendant's submissions based on the cross-examination of the plaintiff's witnesses that there was no conclusive evidence or even evidence on a balance of probabilities that the environment was not sterile when the surgical procedure was performed.

[54] While this court finds that the plaintiff was informed repeatedly by the defendant of the risks of not removing the implant, the defendant had proceeded to carry out the procedure to trim the nose implant as requested by the plaintiff of which he was not licenced for. This court finds that he had failed to inform the plaintiff that he was not permitted to carry out such medical procedure according to the Chapter 1 LCP licence he held. The defendant's failure to disclose the limitations of his qualifications to the plaintiff undermined the latter's ability to make an informed choice about his treatment.

[55] In any event, the liability of the defendant is not negated or mitigated.

ASSESSMENT OF DAMAGES

[56] The plaintiff prayed for compensation for the trauma, shock and stress he claimed to have suffered in the amount of RM300,000. He had also claim for medical negligence compensation for RM500,000. It was pleaded that there was a loss of marriage prospects in the amount of RM100,000 and compensation for living the normal life in the amount of RM500,000. The plaintiff had also asked for compensation for loss of reputation and business confidence in the amount of RM500,000. He sought damages of RM200,000 being costs for future surgical plan. The total amount prayed for is RM2.1m.

[57] The assessment of damages must follow these established principles:

(a) damages serve as compensation, not punishment or reward (*Inas Faiqah bt Mohd Helmi (an infant suing through her father and next friend, Mohd Helmi bin Abdul Aziz) v Kerajaan Malaysia & Ors* [2016] 2 MLJ 1; [2016] 1 MLRA 647; [2016] 2 CLJ 885; [2016] 2 AMR 217);

(b) the award must be fair, adequate and not excessive (*Yang Salbiah & Anor v Jamil bin Harun* [1981] 1 MLJ 292 at p 293; [1980] 1 MLRA 716); and

(c) the purpose is to put the victim, as far as money can, in the position they would have been but for the negligence (*Shanmugam a/l Gopal v Zinal Abidin bin Nazim & Anor* [2003] 3 MLJ 76; [2003] 3 MLRH 410; [2003] 8 CLJ 729).

GENERAL DAMAGES

[58] For pain and suffering, this court awards *RM150,000*. This takes into account the effects from the procedure performed by the defendant that resulted in the plaintiff having had experience puss discharge because the trimming of the plaintiff's nose implant had allowed the infection to continue. The surgical procedure performed by the defendant on the plaintiff had not resolved the plaintiff's condition. The fact that any reconstructive surgery would not fully revert the plaintiff's nose shape back to its original condition was also considered. The pain and discomfort during recovery periods and as well as some psychological impact on his mental health due to the failed procedures was also taken into account.

[59] This award is justified by comparable cases:

(a) *Sheela Christina Nair v Regency Specialist Hospital Sdn Bhd & Ors* [2016] MLJU 1899; [2016] MLRHU 758: the plaintiff was awarded RM240,000 for physical and emotional distress as well as the loss of amenities of life after a negligently performed surgery leaving the plaintiff to rely on colostomy bags due to a perforation of the small intestine;

(b) *Norfazlin bt Zamani v Kerajaan Malaysia & Ors* [2022] MLJU 3696; [2022] MLRHU 3042: the plaintiff was awarded RM260,000 on the basis of physical and psychiatric pain and suffering as well as loss of amenities of life after losing her reproductive organs;

(c) *Pantai Medical Centre Sdn Bhd v Fareed Reezal bin Arund (suing through his wife and litigation representative Wan Zafura bt Wan Kassim) and another appeal* [2022] 4 MLJ 529; [2022] 2 CLJ 173; [2022] 2 MLRA 592; [2022] 1 AMR 837 where the plantiff was left in persistant vegetative state after suffering a brain injury was awarded RM400,000 on the basis of pain and suffering as well as loss of amenities of life; and

(d) *Nur Arissa Naura Noor Affrizal & Anor v Dr Abirami Kunaseelan & Ors* [2023] 5 CLJ 793; [2023] MLRHU 637 where the court awarded the plaintiff RM500,000 on the basis of pain and suffering as well as loss of amenities of life. The plaintiff at the material time was four years of age suffering from brain damage with a life expectancy of another 40 years.

SPECIAL DAMAGES

[60] For special damages, this court regarded all bills, invoices and documents adduced by the plaintiff. This court awards:

(a) cost of corrective surgeries and medicine — *RM68,239.55*:

(i) supported by medical bills, receipts and other documentations;

(ii) including consultations, medications, and dressings;

(iii) verified by receipts and medical records; and

(iv) necessary to repair damage from unauthorised procedures,

(b) transportation expenses — as there is no proof for this court to consider awarding the cost for travel.

[61] The breakdown of special damages are as follows:

Special damages awarded — RM68,239.55	
Description	Cost
(1) Reconstructive rhinoplasty at Hoa Don Dich Vu Hospital in Vietnam	RM35,085
(2) Nasal implant removal at Beverly Wilshire Medical Centre	RM11,109
(3) Treatment at YanHee International Hospital in Thailand	RM21,384.55
(4) Specialist consultation at Beverly Wilshire Medical Centre	RM250
(5) Cost for various prescription drugs, medical reports etc.	RM411

LOSS OF INCOME

[62] For loss of income, although it is feasible that he would have needed to take time off work to attend to this matter, the plaintiff had failed to prove to this court that he had clients booked or that he had to deny clients on those days. He did not produce any form of employment contract to base his claim on. This court will not award any damages on loss of income.

LOSS OF PROSPECT OF MARRIAGE/LIVING THE NORMAL LIFE/LOSS OF REPUTATION

[63] This court will also not award any damages for loss of prospect of marriage or living the normal as there was no evidence for this court to reward such. The plaintiff had failed to show to this court that he was, is or would be spurned as a result of the procedures undertaken for his nose. This court will also deny any damages for loss of reputation and business confidence. Again, nothing produced at trial for this court to assess.

FUTURE MEDICAL EXPENSES

[64] For future medical expenses, Dr Nasir adduced evidence that it will costs around of RM80,000 to repair and reconstruct the plaintiff's nose and to erase the scars. Although the plaintiff sought much more (RM200,000) there was no evidence to justify such amount. This Court noted that the plaintiff had undergone two corrective rhinoplasty surgeries in Vietnam and Thailand. That amounted to RM56,469.55. This court was minded to award RM80,000 for future medical expenses to the plaintiff. As the amount of RM56,469.55 has already been awarded under special damages, this court will award the sum of *RM23,530.45*. This should include any laser treatments for the removal of scars where necessary.

EXEMPLARY DAMAGES

[65] This court is of the considered opinion that an award of exemplary damages is appropriate in this case. Exemplary damages are awarded for deterrence purposes — to make an example of, such as in this case where beauty clinics which have mushroomed nationwide offering beauty aesthetics surgeries must be careful not to proceed to administer and perform procedures beyond their limit allowed by their respective licence. In this case against the defendant, this court awards exemplary damages of *RM100,000* to the plaintiff.

TOTAL AWARD

[66] The total damages awarded are as follows:

(a) general damages: RM150,000;

(b) special damages: RM68,239.55;

(c) future medical expenses: RM23,530.45;

(d) exemplary damages: RM100,000;
TOTAL: *RM341,770*

[67] This court opines that the total amount of damages awarded is reflective of the critical importance of medical practitioners operating strongly within their qualification and licensed scope of practice. The regulatory framework that defines different levels of aesthetic medical practice exists precisely to protect patient safety and ensure appropriate standard of care.

[68] This court awards interest of 5%pa on the said total sum to be calculated from the date of this judgment until full and final settlement. Costs of RM80,000 which this court deems reasonable granted that this is a medical

negligence litigation, the number of witnesses who had attended trial and the duration of trial, to be awarded to the plaintiff.

Plaintiff's claim allowed in part.

Reported by K Selvaraju